

1 IN THE UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 UNITED STATES OF AMERICA, )  
4 vs. ) Case No. 20-20491  
5 - ) Detroit, Michigan  
6 JUSTIN WILLIAM ZUBE, )  
7 Defendant. ) October 22, 2020  
8 ) 5:13 p.m.

8 TRANSCRIPT OF DETENTION HEARING  
9 BEFORE THE HONORABLE ELIZABETH A. STAFFORD  
10 UNITED STATES MAGISTRATE JUDGE

10 APPEARANCES:

11 For the Government: ANCA POP  
12 United States Attorney  
13 Eastern District of Michigan  
14 101 First Street  
15 Suite 200  
16 Bay City, MI 48708  
17  
18 For the Defendant: COLLEEN FITZHARRIS  
19 Federal Community Defender  
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23

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24 TRANSCRIPT PRODUCED FROM DIGITAL VOICE RECORDING  
25 TRANSCRIBER NOT PRESENT AT LIVE PROCEEDINGS

P R O C E E D I N G S

(At 5:13 p.m., proceedings commenced.)

(Defendant present.)

THE CLERK: The Court calls Case No. 20-20491, United States of America versus Justin Zube.

MS. POP: Good afternoon, Your Honor. Anca Pop on behalf of the United States.

THE COURT: Good afternoon.

MS. FITZHARRIS: Good afternoon, Your Honor. Colleen Fitzharris on behalf of Justin Zube.

THE COURT: Good afternoon.

Mr. Zube, please state your full name for the record.

THE DEFENDANT: Justin William Zube.

THE COURT: Mr. Zube, you have the right to remain silent. Anything you say may be used against you.

Do you understand that we're conducting this hearing by video today because the court is closed due to the pandemic?

THE DEFENDANT: Yes.

THE COURT: Do you have any objection to proceeding by video?

THE DEFENDANT: No.

THE COURT: All right. Ms. Pop presented a detention motion worksheet. Have you reviewed that, Ms. Fitzharris?

MS. FITZHARRIS: I don't believe I received this.

THE COURT: Okay. I'll remind the AUSA that the

1 worksheet is supposed to be shared with defense counsel before  
2 the hearing.

3           The worksheet says that Mr. Zube is eligible for  
4 detention because the charge is a felony involving a minor  
5 victim. It does not say that a presumption applies, and I  
6 would ask you, Ms. Pop, under --

7           MS. POP: It does not. He's only being charged with  
8 possession of child pornography.

9           THE COURT: Okay. All right. Thank you.

10           Okay. You can go ahead, Ms. Pop.

11           MS. POP: Yes, Your Honor. The Government requests  
12 detention. We concur with the Pretrial Services'  
13 recommendation and request detention based on both risk of  
14 nonappearance and danger to the community. We would proffer  
15 the facts in the indictment and those in the Pretrial Services  
16 report as well for the record.

17           Now, I know that defense counsel has mentioned there  
18 is a couple topics she would like to discuss at a brief bar.  
19 I'm not sure if she's still planning to do that, otherwise, I'm  
20 going to address this in my argument.

21           MS. FITZHARRIS: Yes, Your Honor. (inaudible) issues  
22 that I think should be discussed at a sidebar.

23           THE COURT: Do you -- do you -- I don't know whether  
24 Mr. Nasser is still speaking with Mr. Nash.

25           George, are you able to put us in a room that we

1 have --

2 UNIDENTIFIED SPEAKER: Yes, I -- yes, I can put the  
3 three of you in a room.

4 THE COURT: All right. We'll be right back,  
5 Mr. Zube.

6 (Pause in proceedings.)

7 THE COURT: I just wanted to say for the record there  
8 was a discussion about factual information that Government  
9 counsel and defense counsel do not agree on, and, as I said  
10 during the breakout, to the extent that there is a factual  
11 dispute that either party is asking me to weigh in to the  
12 decision, that needs to be -- there needs to be a record of  
13 that factual dispute so that to the extent that there are any  
14 challenges later on, or there's a need to know what went into  
15 my decision, that there's a record of it and that it's not  
16 susceptible to different interpretations.

17 Ms. Pop, what I would suggest, since it sounded like  
18 you wanted to address that information sort of defensively to  
19 rebut in advance Ms. Fitzharris' statement, if that's the case,  
20 then you can leave that out of your proffer. If you believe  
21 that it needs to be raised in rebuttal to Ms. Fitzharris'  
22 proffer and argument, then you can raise it at that time.

23 So you can go ahead with your proffer and argument.

24 MS. POP: Sure, Your Honor.

25 So a federal grand jury indicted the defendant in

1 this case with possession of child pornography. He is now  
2 facing approximately 10 to 20 years in prison because this is  
3 not his first offense of this type, but this is his second  
4 offense for possession of child pornography. And it's also  
5 worth mentioning that he also has a juvenile conviction for  
6 CSC-4 for having had sexual relationships with his little  
7 brother.

8           The current offense involves the possession of over  
9 300 child pornography images, including depictions of  
10 prepubescent children engaging in sexual acts with adults, as  
11 well as bondage of these children. At least four identified  
12 children were depicted in the images he possessed.

13           The forensics of his electronic devices also showed  
14 that he visited several websites that pertain to child  
15 pornography and, in addition is just relevant conduct, although  
16 not charged here, he had approximately 48 videos of  
17 surreptitiously recording people using a restroom.

18           So specifically how this came case --

19           THE COURT: Ms. Pop, you said that he had the video  
20 of people using the restroom. Is it your understanding that he  
21 took that video or he just possessed it?

22           MS. POP: It is likely -- we didn't look further into  
23 it at this point, but, yeah, he had 48 videos of  
24 surreptitiously recording people in restroom.

25           Specifically on or about December 7 of 2019, the

1 National Center for Missing and Exploited Children received a  
2 cyber tip from Snapchat. They reported an account that  
3 uploaded child pornography to the account. Through further  
4 investigation of the account, subscriber information and the IP  
5 address, law enforcement determined that the suspect subscriber  
6 with Justin Zube, and the FBI conducted a search warrant at his  
7 residence and seized several of his electronic devices. On  
8 those devices they found the images of child pornography I just  
9 described and the videos that we referenced as well.

10           When it comes to the history and characteristics of  
11 this defendant, he is only 32 years old but already has a very  
12 serious criminal history. In fact, he scores a criminal  
13 history Category VI and very little history of being a  
14 productive member of the community.

15           He has over 10 convictions and another 10 arrests  
16 that didn't result in convictions. He has a history of charges  
17 involving a child -- charges involving sex offenses and using a  
18 computer or telephone to do so.

19           If we can start with in 2002 -- I believe the  
20 Pretrial Services report does a great job at enumerating all of  
21 these offenses and his arrests and numerous violations of  
22 probation or parole, and I'm -- I wanted to also check on the  
23 record, the Government has sent in discovery or in preparation  
24 for this hearing both to the Court as well as to defense some  
25 specific materials pertaining to this defendant's background

1 and criminal history.

2 So in 2002 he was adjudicated as a juvenile.

3 MS. FITZHARRIS: I'm sorry, Ms. Pop. I don't know  
4 what you're referring to because I don't think -- I didn't  
5 receive that.

6 MS. POP: It was sent yesterday to your office.

7 MS. FITZHARRIS: I don't --

8 MS. POP: Yeah, I'm not sure. You probably should  
9 check with your colleagues. It was forwarded to your office  
10 yesterday.

11 THE COURT: Wait a moment. Just a moment. I thought  
12 I asked. Did you receive a copy of the presentence -- Pretrial  
13 Services report, Ms. Fitzharris?

14 MS. FITZHARRIS: Yes, I have that. Ms. Pop  
15 referenced materials that she sent about Mr. Zube's background.  
16 I don't have those.

17 MS. POP: Those were pretty well summarized, though,  
18 in the Pretrial Services report as well, and it's pertaining  
19 mainly to a variety of violations of probation and the  
20 background for his previous conviction for possession of child  
21 pornography.

22 THE COURT: Go ahead, Ms. Pop. The 2002 conviction is  
23 described, as well as the supervision compliance. If there's  
24 something that is not covered, then we can address it at that  
25 time.

1 MS. POP: In 2002, he was adjudicated as a juvenile  
2 for a -- for criminal sexual conduct in the fourth degree,  
3 though he was charged with more serious ones as well for  
4 touching his little brother's penis and actually performing  
5 oral sex on his brother.

6 In 2005, he was convicted of breaking and entering a  
7 vehicle to steal property less than \$200, and he was sentenced  
8 to probation and some jail.

9 In 2005, a little bit later in September, he was  
10 convicted of breaking and entering with intent. Again  
11 sentenced to 330 days and 36 months probation. He violated  
12 probation two months -- or a year later and was sentenced to  
13 one year and 10 months to 10 years.

14 In 2007, he was convicted of larceny.

15 In 2010, student safety zone loitering.

16 In 2011, he was sentenced to a two-year term of  
17 probation for domestic violence and attempted weapons or  
18 firearms possession by a felon. Several bench warrants were  
19 issued while he was on probation for this for various  
20 violations such as failing to report a change of address,  
21 stealing a bicycle, so committing new crimes.

22 He was convicted in 2012 also of receiving and  
23 concealing stolen property. Again, several bench warrants were  
24 issued for him violating the probation term here, either by  
25 committing new crimes such as one of them was possessing child



1 pornography or by failing to comply with the MDOC's electronic  
2 monitoring program. He failed to complete his 180 days on being  
3 monitored. He actually -- his whereabouts were unknown on  
4 several dates, and he had left his residence without any kind  
5 of prior authorization. He also violated -- well, he's -- he  
6 was eventually sentenced to time served and discharged from  
7 that probation term as unsuccessful.

8           In 2014, he was sentenced to one year and four months  
9 to four-year term for incarcerate -- in prison for the child  
10 sexually abusive material possession. That is his prior  
11 conviction for child pornography. And it's worth noting that  
12 when he committed that offense, he was on probation for another  
13 conviction.

14           While Zube was serving the prison term, he received  
15 10 misconducts, out of place bounds several times, disobeying a  
16 direct order, possession of dangerous contraband, interference  
17 with the administration of rules, fighting -- fighting several  
18 times, substance abuse and other substances, destruction or  
19 misuse of property, dangerous contraband and so on. He was  
20 actually eventually discharged from the Michigan Department of  
21 Corrections after serving the maximum four-year term without  
22 parole.

23           So he has a history of child sexually abusive  
24 material, also the using of electronics to -- to commit these  
25 crimes, domestic violence and other violent behavior. There

1 are several arrests and several cases that mention the fact  
2 that he was involved in some sort of violent conduct against  
3 victims.

4 His adjustment on parole or probation was extremely  
5 poor and failed to abide by the court orders and by other  
6 rules. He also failed to comply with the sex offender  
7 registration requirements. There was one charge that was later  
8 not prosecuted, but more recently, there is also a warrant  
9 because of a more recent failure of him to comply with these  
10 requirements.

11 He resides extremely close to a variety of schools.  
12 He is unemployed, has been unemployed for quite some time,  
13 since he got released from prison. He does not have any  
14 financial resources. He has a lot of debt and outstanding  
15 liabilities. He has no property and lives with his father, but  
16 he also lived with him during the commission of all other prior  
17 offenses and all of his parole or probation violations.

18 He has a mental health history of depression and even  
19 suicidal thoughts. He has demonstrated that he's a danger to  
20 the community, especially by his unabated criminal behavior  
21 that is undeterred by any restrictions and conditions placed on  
22 him by the courts or by lengthy prison sentences. His history  
23 demonstrates he is a danger and that no conditions would  
24 reasonably assure the safety of the community or his  
25 appearance.

1           That's all for now, Your Honor.

2           THE COURT: Thank you.

3           Ms. Fitzharris?

4           I can't hear you, Ms. Fitzharris.

5           MS. FITZHARRIS: I'd like to begin by reminding the  
6 Court there is no presumption in this case, and that includes  
7 the fact that he is charged with an offense that carries a  
8 mandatory minimum. I think to place too much weight on the  
9 potential sentence is problematic in the -- given that he is  
10 presumed innocent.

11           A lot of the government's arguments about Mr. Zube's  
12 alleged dangerousness to the community is the fact that this  
13 offense allegedly occurred in February and we are here eight  
14 months later, and I did not hear a significant argument that  
15 Mr. Zube is somebody who is a risk of nonappearance.

16           Mr. Zube was told by the agent to come to the office  
17 and they made -- they communicated about when he would do that,  
18 and he went to the office. I understand that they told him  
19 that he was to pick up property, but given that he was  
20 arrested, he knew this charge was pending, and this was an  
21 option, so I don't think there's any concern that he is not --  
22 he is going anywhere, given that he is a lifelong resident of  
23 this district.

24           Mr. Zube also has a stable residence living with his  
25 father. His father is a significant support to him and is able

1 to provide him financially. Mr. Zube has a difficult time  
2 finding work because of the nature of his convictions and  
3 having a felony, but he has been able to work odd jobs,  
4 cleaning up at local bars, some yard work and things like that,  
5 but finding steady employment is difficult, but his father  
6 provides a significant stabilizing force.

7           The Government devotes a lot of attention to conduct  
8 when Mr. Zube was 14 -- 14 years old. That was a very long  
9 time ago, and the way that somebody behaves when they were 14  
10 is very different than the way they behave as an adult.  
11 Mr. Zube submitted to a polygraph examination about touching,  
12 and he passed that polygraph examination, so we do not have  
13 evidence that he is involved in any hands-on contact with  
14 minors of a sexual nature.

15           The residence where -- the proposed residence where  
16 he would live with his father, the Court -- the Government  
17 mentioned its proximity to schools. My understanding is that  
18 conviction -- that -- that condition of the sex offender  
19 registration requirements about how far from schools is -- is  
20 currently considered to be unconstitutional and is, therefore,  
21 not enforceable.

22           Mr. Zube --

23           THE COURT: Wait. Can you say that again? The what?

24           MS. FITZHARRIS: Judge Cleland found that the -- the  
25 resident -- the 1000 feet residence requirement is

1 unconstitutionally vague.

2 THE COURT: Okay. That's not what's at issue here,  
3 is it?

4 MS. FITZHARRIS: No, I'm just -- the Government  
5 raised the question about the propriety of the residence and  
6 its proximity to schools, and it's -- it's not like he would be  
7 in violation, but he -- he is actually registered as a sex  
8 offender in July, so he -- he was current on his sex offender  
9 registration.

10 The -- he has court for an alleged failure to  
11 register that happened back in January or February. That  
12 appears to be potentially the result of misunderstanding.  
13 Mr. Zube did not have money to pay, and there was an assumption  
14 that he could not register if he did not -- if he was  
15 delinquent on the fine. All of that is going to -- Mr. Zube  
16 plans to address that at his court appearance on the 6th.

17 The Government -- just to respond to a few other  
18 things. There are no -- there are no computers in the home  
19 anymore. There's no wifi in the proposed residence, no  
20 tablets, and I -- I think, you know, it would be an appropriate  
21 condition for the Court to say that Mr. Zube cannot have an  
22 internet accessible phone. But if the Court is concerned about  
23 conduct, you know, accessing internet devices, there are  
24 conditions that this Court can set to ensure that he succeeds.

25 Mr. Zube -- the Government also talked a lot of --

1 talked about misconducts in prison. Ten misconducts in five  
2 years may sound like a lot, but in the MDOC, the average person  
3 receives two major misconducts per year, and major misconducts  
4 versus minor mis -- minor misconducts like being out of place  
5 or, you know, failure to follow rules, those things are  
6 incurred regularly because -- in prison, and so I don't think  
7 we really can infer a whole lot about how Mr. Zube would do on  
8 pretrial supervision given that. It's just -- to see someone  
9 come out of the MDOC without misconducts is, frankly, a  
10 remarkable feat.

11           And then to address the Government's -- the  
12 Government is assuming that Mr. Zube took videos of --  
13 surreptitious videos of people using the restroom, and we can't  
14 detain him on an assumption. Again, I think it's -- it's  
15 critical to remember that in the -- in the period of time  
16 between February and now, we don't have any issue regarding  
17 contact, inappropriate contact, with minors. His limited  
18 contact with his children is always supervised, and he is  
19 living with an appropriate adult, his father, who is -- who is  
20 willing and able to support him throughout this case.

21           This Court should grant him his bond. We're  
22 recognizing that there are conditions. I mentioned the  
23 condition that he, you know, not obtain any computers. I think  
24 that is an appropriate condition, not to have internet capable  
25 phone or any internet capable device, submit any devices that

1 are available to inspection, and if the Court is additionally  
2 concerned about his location and conduct out in the community,  
3 a GPS tether -- if there are, you know, allegations at least  
4 would confirm, you know, where he is, but, for the most part,  
5 Mr. -- Mr. Zube is at home with his father.

6 Unless the Court has any questions for me, I think  
7 I'm finished.

8 THE COURT: Ms. Pop, any rebuttal?

9 MS. POP: Briefly, Your Honor, just to address a  
10 couple of the statements about the fact that we referenced his  
11 14 year old CSC-4 conviction. We do mention that, even though  
12 it was when he was 14, because how he behaved at 14 actually  
13 continued throughout his adult life. He continued the same  
14 type of pattern of behavior.

15 All of his misconducts also in prison are actually a  
16 reflection of his failure to obey by the rules and law which he  
17 has done his whole adult life as well.

18 He was not necessarily cooperative at the time of the  
19 search warrant because he failed, obviously, to answer any  
20 questions about the current case and only took a polygraph on  
21 something that he probably thought he could pass.

22 We also believe that the father is definitely not an  
23 appropriate custodian in this case because the defendant  
24 resided with him every time he committed any of the priors --  
25 prior offenses and violations and that residing with his father

1 didn't prevent him from committing new crimes.

2 That's all, Your Honor.

3 THE COURT: All right. Thank you. Mr. Zube is  
4 presumed innocent. It's the Government's burden to prove by a  
5 preponderance of the evidence that he is a flight risk or that  
6 there's a risk that he would fail to appear, and by clear and  
7 convincing evidence that he presents a danger to the community.

8 I don't really feel that the Government made an  
9 argument of failure to appear as directed or flight risk, but  
10 instead an argument of dangerousness, and I agree with the  
11 Government that there is clear and convincing evidence that  
12 Mr. Zube does present -- present a danger to the community.

13 I usually do not consider convictions as old as 2002  
14 or when someone was 14 unless it is indicative of a pattern of  
15 behavior that continues to the recent period of time. There is  
16 a distinction that the 2002 conviction involves actual  
17 touching, and there isn't evidence of actual touching since  
18 then, but the 2014 conviction or the offense occurred while he  
19 was on probation.

20 And I understand Ms. Fitzharris' argument to be that  
21 it's not unusual for someone in the Michigan Department of  
22 Corrections to have a lot of misconduct tickets, but I have to  
23 say, it's very unusual to see a defendant serve the maximum  
24 period of time. It is much more common to see a defendant  
25 released on parole before the end of his -- the maximum period



1 of the conviction.

2           And Mr. Zube has his hand up, but I can tell you that  
3 I'm ruling, and I'm going to continue to rule. And I also take  
4 into consideration the pending charges for obstructing, the  
5 failure to comply with the reporting duties. I understand  
6 Ms. Fitzharris has said there's been some miscommunication or  
7 misunderstanding. The Pretrial Services report says those  
8 charges are pending and that he's scheduled for preliminary  
9 examination on November 5th, and I do need to consider that.

10           I also -- and, really, the first consideration is the  
11 nature and seriousness of the charges, and even though there  
12 aren't allegations in the current complaint that Mr. Zube --  
13 or, I'm sorry, the indictment, that he was touching anyone or  
14 that he took the photographs, I do want to emphasize that the  
15 possession, the collection of child pornography, is not a  
16 victimless crime. It is a crime that stays with the child  
17 victims for -- for their lives, and the number of images that  
18 Mr. Zube is alleged to have possessed is of significant  
19 concern.

20           There are also the allegations that he has  
21 surreptitiously recorded recordings of people who are using the  
22 restroom. There's a question about whether he took those  
23 images or not. Again, that's not a victimless crime, to take  
24 pictures of people without their knowledge when they are using  
25 the bathroom. So, in other words, this is a crime with victims

1 and the -- Mr. Zube's criminal history does not demonstrate  
2 that he has -- has diminished his interest in sexually abusive  
3 materials as he was convicted of in 2014.

4 And for these reasons, I do find that there's clear  
5 and convincing evidence that he is a danger to the community  
6 and that there are no conditions or combination of conditions  
7 that would assure the safety of the -- of the community if he  
8 were released.

9 Has Mr. Zube -- has he been arraigned?

10 THE CLERK: Yes, Judge. We did complete the  
11 arraignment yesterday.

12 THE COURT: Okay. So this case -- it's assigned to  
13 Judge Thomas Ludington, and he'll schedule all future dates.

14 Ms. Fitzharris, is there anything else you needed me  
15 to do today with regard to Mr. Zube?

16 MS. FITZHARRIS: No, not from me, although I would  
17 like to speak to him.

18 THE COURT: If Mr. -- if --

19 THE CLERK: George and I can accommodate five minutes  
20 max, but we do need to log off as soon after that.

21 THE COURT: Okay. All right. Thank you.

22 Anything else, Ms. Pop?

23 MS. POP: No, Your Honor.

24 THE COURT: All right. Thank you.

25 THE CLERK: Thank you all. Court is adjourned.

1 (At 5:49 p.m., court recessed.)  
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4 \* \* \* \* \*

5 C E R T I F I C A T E

6 I certify that the foregoing is a correct transcript  
7 from the digital sound recording of the proceedings in  
8 the above-entitled matter.  
9

10  
11 Date: 11-8-2022

*Carol M. Harrison*

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